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Judgment Dec

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~266~~. 1 7 7

THE TOWN OF VENICE, PLAINTIFF IN ERROR,

vs.

JAMES O. WOODRUFF AND DANIEL MACAULEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 16, 1873.

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1 United States circuit court, northern district of New York.

Pleas before the judges of the circuit court of the United States of America for the northern district of New York, at the city of Albany, at the October term of said court held at said city on the second Tuesday of October, A. D. 1872.

Witness the honorable Lewis B. Woodruff, judge.

CHARLES MASON, *Clerk.*

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, at the October term of said circuit court, A. D. 1872, to wit, the 14th day of January, 1873, came James O. Woodruff and Daniel Macauley, by David Wright, their attorney, and brought into said court their certain declaration or complaint against the town of Venice; which said declaration or complaint was and is in the words and figures following, to wit:

2 United States circuit court, northern district New York, of the term of October, to wit, the 14th day of January, 1873, as yet of the term of October, 1872.

JAMES O. WOODRUFF AND DANIEL MACAULEY }
vs.
THE TOWN OF VENICE. }

NORTHERN DISTRICT OF NEW YORK, *ss:*

James O. Woodruff and Daniel Macauley, plaintiffs in this action, by David Wright, their attorney, brings this, their action, against the town of Venice, defendant, and by this, their complaint, say and show to the court here—

That they, the said plaintiffs, are not citizens or residents of the State of New York, but that they are citizens of the State of Indiana, and residents of the city of Indianapolis in said State of Indiana.

That the defendant, the said town of Venice, is one of the towns of the county of Cayuga in said State of New York, and within the northern district of New York.

That said defendant is a municipal corporation for certain purposes, and amongst others of suing and being sued upon contracts. And for a first count, or cause of action, the said plaintiffs say and aver—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signature, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during

the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums, and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners, by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act, until a railroad company had been duly organized according to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

3 That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors

of said town of Venice, according to said act, and by virtue thereof, under their several signatures, duly executed a certain writing obligatory, or bond of said town, bearing date the said 2d day of March, 1853, and numbered eight in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 8, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King, and Jonas Wood and Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. 8 thirty-nine several coupons, or promises to pay, the semi-annual interest of thirty-five dollars each, which would become due and payable, upon the expiration of each and every six months from and after the first day of January, one thousand eight hundred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 8."

That afterwards, and before said bond No. 8 was negotiated or delivered by said town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 8 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afte'wards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, from a person unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon, at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. 8, with the coupons hereinbefore mentioned, thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said unknown person, lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city

of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a valuable consideration then paid by them therefor, purchased and became, and have ever since continued to be, and now *is* the owners, holders, and bearers of said bond No. 8, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. 8, with the said coupons attached, was thereupon then and there delivered to them, the said plaintiffs, and the same has ever since continued and remained, and still remains in the possession as such owners, holders, and bearers thereof, and they, the said plaintiffs, thereby became, and were, and still are, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when, and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice at any time since, had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means, whereby the said several sums acknowledged by said town of Venice to be due, could be, or would have been, paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified. And said plaintiffs further aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same, or any part thereof, to them, the said plaintiffs.

4 Second. And for a further and second cause of action, the said plaintiffs further say and avers—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed, and

the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should, at all times, be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of

Venice according to said act, and by virtue thereof, under their several signatures, duly executed a certain writing obligatory, or bond of said town, bearing date the said 2d day of March, 1853, and numbered nine in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. nine, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King and Jonas Wood and Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. nine thirty-nine several coupons, or promises to pay the semi-annual interest of thirty-five dollars each, which would become due and payable upon the expiration of each and every six months from and after the first day of January, one thousand eight hundred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 9."

That afterwards, and before said bond No. 9 was negotiated or delivered by said town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 9 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afte'wards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, from a person unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions, and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 9, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga, hereinbefore mentioned thereon endorsed, to him, the said unknown person, the lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a valuable consideration then paid by them therefor, purchased and became, and have ever since continued to be, and now are, the owners, holders, and bearers of said bond No. 9, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. 9, with the said coupons attached, was thereupon then and there delivered to them, the said plaintiffs, and the same has ever since continued and remained, and still remains, in their possession as such owners, holders, and bearers thereof, and they, the said plaintiffs thereby became and were, and still are, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice at any time since had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Venice to be due could be, or would have been, paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified. And said plaintiffs further aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same, or any part there'f, to them, the said plaintiffs.

6 Third. And for a further and third cause of action the said plaintiff' further says and aver—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually, or semi-annually,

during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town-officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad-law, for the purpose of constructing the aforesaid-described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad-law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins, and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of Venice according to said act, and by virtue thereof, under their several

signatures, duly executed a certain writing obligatory, or bond of said town, bearing date the said 2d day of March, 1853, and numbered eleven, in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to, the bearer of said bond No. 11 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King and Jonas Wood and Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. 11 thirty-nine several coupons, or promises to pay the semi-annual interest of thirty five dollars each, which would become due and payable upon the expiration of each and every six months from and after the first day of January, one thousand eight hun-
7 dred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 11."

That afterwards, and before said bond No. 11 was negotiated or delivered by said town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 11 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afte'wards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, from a person unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 11, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said unknown person, the lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a

valuable consideration then paid by them therefor, purchased and became, and has ever since continued to be, and now are, the owners, holders, and bearers of said bond No. 11, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. , with the said coupons attached, was thereupon then and there delivered to them, the said plaintiffs, and the same has ever since continued and remained, and still remains, in their possession as such owners, holders, and bearers thereof; and they, the said plaintiffs, thereby became, and were, and still are, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when, and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice at any time since, had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Venice to be due could be, or would have been, paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said town of has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified. And said plaintiffs fu'ther aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same, or any part there'f, to them, the said plaintiffs.

8 Fourth. And, for a further and fourth cause of action, the said plaintiff' says and aver—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums, and at

such times and place, as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should, at all times, be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad-law, for the purpose of constructing the aforesaid-described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad-law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of Venice, according to said act, and by virtue thereof, under their several signatures, duly executed a certain writing obligatory, or bond of said

town, bearing date the said 2d day of March, 1853, and numbered twelve in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 12, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King and Jones Wood and Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. 12, thirty-nine several coupons, or promises to pay, the semi-annual interest of thirty-five dollars each, which would become due and payable, upon the expiration of each and every six months from and after the first day of January, one thousand eight hundred and
9 fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 12."

That afterwards, and before said bond No. 12 was negotiated or delivered by said town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 12 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afte'wards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, of a person unknown to these plaintiffs, the sum of one thousand dollars, for the purpose and in accordance with the provisions, and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon, at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. 12, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said unknown person, the lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a valua-

ble consideration, then paid by them therefor, purchased and became, and have ever since continued to be and now are, the owners, holders, and bearers of said bond No. 12, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. 12, with the said coupons attached, was thereupon then and there delivered to them, the said plaintiffs, and the same has ever since continued and remained and still remains in their possession, as such owners, holders, and bearers thereof, and they, the said plaintiffs thereby became, and were, and still are, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice at any time since had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means, whereby the said several sums acknowledged by said town of Venice to be due, could be, or would have been, paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified. And said plaintiffs fu'ther aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same or any part there'f, to them, the said plaintiffs.

10 Fifth. And for a further and fifth cause of action, the said plaintiff further says and aver—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums

and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners, by section first of said act, should hold their office till the next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should, at all times, be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice, made next previous to the time of borrowing the money authorized by said act, had been obtained, in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of Venice according to said act, and by virtue thereof, under their several signatures, duly executed a certain writing obligatory, or bond of said town, bearing date the said 2d day of March, 1853, and numbered

nineteen in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay, to the bearer of said bond No. 13 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King and Jonas Wood & Isaac Smith, as such supervisor and railroad commissioners as aforesaid and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. 13 thirty-nine several coupons, or promises to pay the semi-annual interest of thirty-five dollars each, which would become due and payable upon the expiration of each and every six months from and after the first day of January, one thousand eight hundred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 13."

That afterwards, and before said bond No. 13 was negotiated or delivered by said town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 13 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afte'wards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, from a person unknown to these plaintiffs, the sum of one thousand dollars, for the purpose and in accordance with the provisions, and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 13, with the coupons herein before mentioned, thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said unknown person, the lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a valuable consideration then paid by them therefor, purchased and became, and

have ever since continued to be, and now are, the owners, holders, and bearers of said bond No. 13, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. 13, with the said coupons attached, was thereupon then and there delivered to them, the said plaintiffs, and the same has ever since continued and remained, and still remains in their possession as such owners, holders, and bearers thereof, and they, the said plaintiffs, thereby became and were and still are entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when, and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice at any time since, had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Venice to be due, could be, or would have been, paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified. And said plaintiffs further aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same, or any part thereof, to them, the said plaintiffs.

12 Sixth. And for a further and sixth cause of action, the said plaintiff further says and aver—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners, to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town-officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad; and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins, and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

That afterwards, to wit, on the 2d day of March, 1853, Calvin King who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of Venice, according to said act, and by virtue thereof, under their several signatures, duly executed a certain writing obligatory, or bond, of said town, bearing date the said 2d day of March, 1853, and numbered fourteen in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the

State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 14 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re imbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King & Jonas Wood & Isaac Smith, as such supervisor and railroad commissioners, as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. 14 thirty-nine several coupons or promises to pay the semi-annual interest of thirty-five dollars each, which would become due and payable upon the expiration of each and every six months from and after the first day of January, one thousand
13 eight hundred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 14."

That afterwards, and before said bond No. 14 was negotiated or delivered by said town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 14 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, from a person unknown to these plaintiffs, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature: and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 14, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said unknown person, the lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a valuable consideration, then paid by them therefor, purchased and became, and have ever since continued to be, and now are, the owners, holders, and bearers of said bond No. 14, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. 14, with the said

coupons attached, was thereupon then and there delivered to them, the said plaintiffs, and the same has ever since continued and remained, and still remains, in their possession as such owners, holders, and bearers thereof, and they, the said plaintiffs, thereby became and were, and still are, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice at any time since, had at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums, acknowledged by said town of Venice to be due, could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified. And said plaintiffs fu'ther aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse to pay the same, or any part there'f, to them, the said plaintiffs.

14 Seventh. And for a further and seventh cause of action, the said plaintiff' further says and aver—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums, and at such times and place, as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners, by section first of said act, should hold their office till the next annual town-meeting of their town, when

it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should, at all times, be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of Venice, according to said act, and by virtue thereof, under their several signatures, duly executed a certain writing obligatory or bond of said town, bearing date the said 2d day of March, 1853, and numbered twenty-two in the series of bonds executed under and in virtue of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 22, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable

semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King & Jonas Wood & Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. 22 thirty-nine several coupons, or promises to pay, the semi-annual interest of thirty-five dollars each, which would become due and payable upon the expiration of each and every six months from and after the first day of January, one thousand
15 eight hundred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. 22."

That afterwards, and before said bond No. 22 was negotiated or delivered by said town of to any person, to wit, on the 15th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said town of Venice, made and endorsed upon bond No. 22 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper, purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said town Venice, from a person unknown to these plaintiffs, the sum of one thousand dollars, for the purpose and in accordance with the provisions, and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 22, with the coupons, hereinbefore mentioned, thereto attached, and the said certificate of the clerk of the county of Cayuga, hereinbefore mentioned, thereon endorsed, to him, the said unknown person, the lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Indianapolis, in said State of Indiana, they, the said plaintiffs, for a valuable consideration then paid by them therefor, purchased and became, and have ever since continued to be, and now are, the owners, holders, and bearers of said bond No. 22, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. 22, with the said coupons attached, was thereupon, then and there, delivered to them, the said plaintiffs, and the same has ever since continued and

remained, and still remains, in their possession as such owners, holders, and bearers thereof, and they, the said plaintiffs, thereby became and were, and still are, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiffs aver that the said town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Venice, at any time since, had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums, acknowledged by said town of Venice to be due, could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified. And said plaintiffs fu'ther aver that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1855, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same, or any part there'f, to them, the said plaintiffs.

Wherefore, the plaintiffs demand judgment against said town of Venice for the principal and interest due, and to grow due, upon said several bonds and the coupons thereto attached, to the amount of twenty thousand dollars, together with the costs of this action.

D. WRIGHT,
Plaintiffs' Atty., Auburn, N. Y.

(Endorsed:) U. S. circuit court, northern dist. N. Y. James O. Woodruff and Daniel Macauley vs. The Town of Venice. Declaration or complaint. D. Wright, plffs.' atty., Auburn, N. Y. Filed January 14, 1873.

16 And afterwards, to wit, on the 20th day of January, 1873, the said defendant appeared in said action, by Warren A. Worden, its attorney, and filed its answer to the said declaration or complaint of the said plaintiff; which said answer was and is in the words and figures following, to wit:

17 Circuit court of the United States, northern district of New York.

JAMES O. WOODRUFF AND DANIEL MACAULEY
ag'st
THE TOWN OF VENICE.

And the said defendant, the town of Venice above named, by Warren A. Worden, its attorney, comes and defends this action, and says that it denies the whole of the said plaintiffs' complaint herein, & each & every allegation therein contained, except that it is admitted that it was provided

in and by said act mentioned and referred to in said complaint that the supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad was formed, nor until the written assent of two-thirds of the resident tax-payers of said town was obtained and filed, together with the affidavit, as in said complaint stated and set forth.

Second. And for a second and further defence herein the said defendant says that the said plaintiffs ought not to have or maintain
18 this action herein against this defendant, because it says that it, this defendant, the town of Venice, is not a citizen of the State of New York, and that this court has no jurisdiction over this defendant, the town of Venice.

Third. And for a third and further defence herein the said defendant says that the said plaintiffs ought not to have or maintain this their aforesaid action thereof against this the said defendant, to recover the said several sums of money alleged in said complaint to have accrued by way of interest upon said alleged bonds & coupons in said complaint mentioned on or prior to the first day of January, eighteen hundred and sixty-seven, because it says that the same did not, nor did any or either of them or any part or portion thereof, accrue or become due and payable within six years next before the commencement of this suit; and as to the remaining portion of said several sums of money in said complaint mentioned, the said defendant says it does not owe the same, or any or either of them, or any part or portion thereof, either in manner and form as is stated and set forth in the said plaintiffs' complaint, or otherwise.

19 Fourth. And for a further and fourth defence herein the said defendant says that the said plaintiffs ought not to have or maintain this their aforesaid action thereof against this defendant, because it says that the said several supposed causes of action in the said plaintiffs' complaint mentioned did not, nor did any or either of them, accrue to the said plaintiff' at any time within six years before the commencement of this suit in manner and form as the said plaintiffs have above thereof complained against this the said defendant, or otherwise.

Fifth. And for a further and fifth defence herein the said defendant says that the said plaintiffs ought not to have or maintain this action against this defendant, because it says that the said several supposed bonds & coupons in said complaint mentioned and referred to are not, nor are any or either of them, the deed, obligation, promise, or undertaking of this defendant in any way or manner, or for any cause whatsoever.

Sixth. And for a further and sixth defence herein the said de-
20 fendant says that the said plaintiffs ought not to have or maintain this action against this defendant, because it says that the said Calvin King in said complaint mentioned was not the supervisor, nor was Jonas Wood & Isaac Smith in said complaint mentioned, or either of them, assessors of the said town of Venice at the time when said act entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," passed April 16th, 1852, and mentioned and referred to in said complaint, was passed by the legislature of the State of New York, or when the same became a law and statute of said State, as in said complaint stated and set forth, and that the said Calvin King, Jonas Wood, & Isaac Smith in said complaint mentioned never were, nor were any or either of them, ever the agents of the said town of Venice for the purpose of executing or delivering for said defendant, the said

21 town of Venice, the said supposed bonds and coupons in said complaint mentioned, or any or either of them, in any way or for any cause or purpose whatsoever, nor were they, the said Calvin King, Jonas Wood, and Isaac Smith, or any or either of them, ever authorized or empowered in any way or manner, or for any cause whatsoever, to execute or deliver for said town of Venice the said supposed bonds and coupons in said complaint mentioned, or any or either of them in any way, or for any cause or purpose whatsoever; and that the interest secured to be paid in and by the said several supposed bonds, and each and every one of them, exceeds the sum of seven per cent. per annum.

Seventh. And for a further and seventh defence herein the said defendant says that the said plaintiffs ought not to have or maintain this action herein against this defendant, because it says that the said several supposed bonds and coupons in said complaint mentioned were not, nor were any or either of them, ever executed or delivered for any money borrowed, or agreed to be borrowed, on the faith and credit of the said town of Venice, the defendant herein, according to the condi-

22 tions and requirements of said act entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York & Erie or Cayuga & Susquehannah Railroad, passed April 16th, 1852, and being the same act mentioned and referred to in the said plaintiffs' complaint herein, but on the contrary thereof the said defendant says that the said several supposed bonds & coupons in said complaint mentioned were each & every one of them delivered by the said Jonas Wood to the said The Lake Ontario, Auburn & New York Railroad Company mentioned and referred to in said plaintiffs' complaint for stock subscribed for and taken by the said Jonas Wood, Isaac Smith, & Calvin King in the said railroad, & which was the first and only negotiation & delivery of said alleged bonds & coupons in said complaint mentioned by the said Jonas Wood or any other person or persons whomsoever, & that such negotiation & delivery was without authority and unauthorized, and was illegal and void, and in violation of the terms and requirements of the act of the legislature of the

23 State of New York above mentioned & referred to, and that at the time when the said plaintiffs became, as is alleged in said complaint, the owners & holders & bearers of the said alleged bond & coupons in said complaint mentioned and referred to, there was due and unpaid on each of the said alleged bonds, with said coupons which were attached to the same, respectively, a large sum of money, to wit, the sum of two hundred & ten dollars, or thereabouts, for interest then due & unpaid upon the said bonds & coupons mentioned and referred to in said complaint, and that the said plaintiffs at the time when they became, as is alleged in said complaint, the owner, holders, & bearers of the said alleged bonds & coupons in said complaint mentioned, and each and every one of them, they, the said plaintiffs, well knew that such interest was due and unpaid on the same, respectively, and that they, the said plaintiffs, became such supposed owners, holders, & bearers of them & each of them, respectively, not in the ordinary

24 course of business, and with such knowledge as aforesaid, and without a bona-fide valuable consideration by them paid for the same, and with full knowledge of the original delivery of said alleged bonds & coupons to said railroad company as aforesaid, and that they, the said plaintiffs, are not bona-fide owners & holders or bearers of said alleged bonds and coupons, or any or either of them, for a valuable consideration paid by them or either of them & in the ordinary course of business, either with or without such knowledge as aforesaid.

Eighth. And for a further & eighth defence herein, the said defendant says that the said plaintiffs ought not to have or maintain this action against this defendant, because it, this defendant, says that the supervisor of the said town of Venice and the assessors of said town, in office when said act of the legislature of the State of New York, in said complaint mentioned and referred to, was passed & became a law, did not, nor did any or either of them, or any other person or persons, or officer or officers, whomsoever, ever obtain or file in the clerk's office of Cayuga County the written assent of two-thirds of the resident taxpayers of said town, as appeared on any assessment roll of said
25 town, as required by said act, and that the said town of Venice never was authorized or empowered in any way whatsoever or for any cause or purpose whatsoever, nor was any person or persons, officer or officers, whomsoever, ever authorized or empowered in any way or manner whatsoever, or for any cause or purpose whatsoever, to borrow any money or to execute or deliver for the said defendant, the said town of Venice, the said several alledged bonds & coupons in said complaint mentioned, or any or either of them, in any way or manner or for any cause or purpose whatsoever, and that the same are illegal and void, and of no force or effect whatsoever.

Wherefore, this defendant, the town of Venice, demands judgment herein, with its reasonable costs and charges in this behalf expended.

Dated Auburn, January 15th, 1873.

WARREN A. WORDEN,
Deft.'s Attorney, Auburn, N. Y.

WARREN T. WORDEN,
Of Counsel for said Defendant, Auburn, N. Y.

26 United States circuit court, northern district of New York.

STATE OF NEW YORK, *Cayuga County, ss:*

Herman Moshier, of the town of Venice, in said county of Cayuga, being duly sworn, deposeth and says that he is the supervisor of the said town of Venice, and that he has fully & fairly stated this case & the grounds of the defendant's defence herein to Warren T. Worden, of Auburn, in said county of Cayuga, one of the defendant's counsel herein, and that the said defendant has a good and substantial defence upon the merits of this action, as he is advised by his said counsel, Warren T. Worden, & counsel for said defendant herein, and verily believes to be true.

HERMAN MOSHIER,
Supervisor.

Sworn & subscribed to before me this 18th day of January, 1873.

CHARLES L. ADAMS,
U. S. Commissioner, Northern Dist. of New York.

I hereby certify that I have advised the above-named Herman Moshier that the defendant above-named has a good and substantial defence upon the merits in said action, as stated in the above affidavit of
27 the said Herman Moshier; and I further certify that the above & foregoing answers and each and every of them, are, in my opinion, well founded.

Dated Auburn, N. Y., January 18th, 1873.

WARREN T. WORDEN,
Of and Counsel for said Deft., the Town of Venice.

(Endorsed:) Circuit court of the United States, northern district of New York. James O. Woodruff and Daniel Macauley ag'st the town of Venice. Deft.'s answers. Warren A. Worden, deft.'s atty., Auburn, N. Y. Filed January 20, 1873.

28 And therefore the issue above joined came on to be tried at the June term of said court, held at the village of Canandaigua on the 19th day of June, A. D. 1873, before the honorable Ward Hunt, justice, and a jury, at which day and place last aforesaid came the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury summoned to try the said issue, being empannelled and sworn, after hearing the evidence offered in said cause, say, upon their oaths, that the said defendant is guilty of the premises above laid to its charge, in manner and form as the said plaintiffs have above complained against it, and they assess the damages of said plaintiffs by reason of the premises, over and above their costs and charges by them about their suit in this behalf expended, to ten thousand nine hundred and thirty-eight dollars and twenty cents.

29 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the village of Canandaigua on Thursday, the 19th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Ward Hunt, justice.

JAMES O. WOODRUFF AND DANIEL MACAULEY }
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On motion of Warren T. Worden, counsel for defendant, ordered that the defendant have sixty days in which to make and serve a bill of exceptions, and that the plaintiffs have the same time to prepare amendments thereto, and that in the mean time all other proceedings be stayed.

30 Therefore, it is considered that the said plaintiffs, James O. Woodruff and Daniel Macauley, do recover against the said defendant, the town of Venice, their said damages by the jurors aforesaid, in form aforesaid, assessed, and also two hundred and forty-four dollars and eighty-seven cents for their costs and charges by the court here adjudged, of increase to the said plaintiffs, with their assent, which said damages, costs, and charges, in the whole, amount to eleven thousand one hundred and eighty-three dollars and seven cents.

And said defendant in mercy, &c.

Judgment signed this 15th day of September, A. D. 1873.

CHARLES MASON, *Clerk.*

(Endorsed:) U. S. circuit court, north. dist. of N. Y. James O. Woodruff and Daniel Macauley vs. The Town of Venice. Judgment record. David Wright, plffs.' atty. Damages, $10,938.20; costs, $244.87—$11,183.07. Filed September 15th, 1873, 5 o'clock p. m.

31 *Bill of exceptions on behalf of deft.*

Circuit court of the United States, second circuit, northern district of New York.

THE TOWN OF VENICE }
ads.
JAMES O. WOODRUFF AND DANIEL MACAULEY. }

Afterwards, to wit, at a circuit court held at the village of Canandaigua, in and for the northern district of New York, on the seven-

teenth day of June, one thousand eight hundred and seventy-three, by and before the Hon. Ward Hunt, one of the associate justices of the Supreme Court of the United States, came the parties aforesaid, by their attorneys aforesaid, and also by their respective counsel, and the issues thus joined came on to be tried by and before the said judge and a jury; and the said plaintiffs, in order to prove the issues on their part, produced and read in evidence the act of the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the con-
32 struction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," passed April 16, 1852.

The plaintiffs then produced and read in evidence a certified copy of the articles of incorporation of the Lake Ontario, Auburn and New York Railroad Company, mentioned and referred to in the pleadings in this cause, which articles of association provided for the construction and operation of a railroad from some point on Little Sodus Bay, in the county of Cayuga and State of New York, passing through the towns of Sterling, Victory, city of Auburn, and town of Fleming, Scipio, Venice, and Genoa, in said county of Cayuga, and into the county of Tompkins, in said State of New York, to a point on the Cayuga and Susquehannah Railroad, in said county of Tompkins, about seven miles from Ithaca.

33 The said plaintiffs then produced the seven several alleged bonds, coupons, and clerk's certificate, mentioned and referred to in the complaint in this cause, and offered to prove that the signatures to the same were genuine, and that the said Calvin King was elected supervisor, and the said Jonas Wood and Isaac Smith railroad commissioners, on the first day of March, eighteen hundred and fifty-three, that being the day appointed by law for holding the town meeting for the election of town officers in that year, and to the proving of which the counsel for said defendant made severally and separately the same objections which he made to the reading of said several bonds and coupons in evidence, as hereinafter stated and set forth, and which said several objections his honor the judge severally and separately overruled, and to which said several and separate rulings the counsel for the said defend-
34 ant then and there severally and separately excepted, and the same were then and there severally and separately voted. The counsel for said plaintiffs then proved said signature to be genuine, and that the said King was elected supervisor and the said Wood and Smith railroad commissioners at said town meeting, held in and for said town of Venice on the said first day of March, eighteen hundred and fifty-three.

The counsel for said plaintiffs then offered to read the said certificate of the clerk of Cayuga County in evidence, and which certificate, under the hand of said clerk, was endorsed on each of said bonds, and to which the counsel for said defendant then and there objected, because there was no statute or rule of law of said State authorizing or empowering the clerk to make any such certificate. His honor the judge overruled said objection, and to which ruling and decision the counsel for
35 said defendant then and there excepted, and the same was then and there voted. The said certificate was then read in evidence in the words and figures following, to wit:

"CAYUGA COUNTY, CLERK'S OFFICE.

"I, Edwin B. Marvine, clerk of the county of Cayuga, hereby certify

that a paper purporting to be the written assent of two-thirds of the resident tax-payers of the town of Venice, with the affidavit required by sec. 1 of the act referred to by its title in the foregoing bond, has been filed in this office.

"Dated Auburn, May 16, 1853.

(Signed)

"E. B. MARVINE,
"*Clerk of Cayuga County.*"

The counsel for said plaintiffs then called as a witness one LYMAN C. COMSTOCK, who, being duly sworn, testified as follows:

I am clerk of Cayuga County. I have with me from the files of said office the assents & affidavits annexed in the case of the town of Venice. They were filed in said office on the third day of November, 1852,
36 and on which there are two hundred and fifty-nine names in the aggregate, and which were signed to assents, of which the following is a copy, viz:

"We, the undersigned, resident tax-payers of the town of Venice, in the county of Cayuga, do hereby consent that the supervisor and assessors of said town may borrow, on the faith and credit of said town, such a sum of money as they may deem necessary, not exceeding twenty-five thousand dollars, for a term not exceeding twenty years, at such rate of interest as may be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds in which the interest shall be made payable annually or semi-annually during the term said money may be borrowed, and the principal and interest made payable in such sums and at such times and places as shall be agreed upon and expressed in the bonds to be executed; and
37 that the monies so borrowed may be paid to the president and directors of a railroad company, organized according to the requirements of the general railroad law, for the purpose of constructing a railroad connecting Lake Ontario with the Susquehannah and Cayuga Railroad, and passing through the city of Auburn, upon the stock of said railroad company to be subscribed for and taken by said supervisor and assessors in the name of said town."

There is endorsed on said assents an affidavit, of which the following is a copy, to wit:

"STATE OF NEW YORK,
"*Cayuga County, ss:*

"Luke H. Mills, supervisor of the town of Venice, in said county, and William Jones, one of the assessors of said town, being duly sworn, depose and say, and each for himself says, that the persons whose names are subscribed to the several foregoing written assents hereto at-
38 tached comprise two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the date hereof.

"Dated October 30, 1852.

"LUKE H. MILLS,
"*Supervisor.*
"WILLIAM JONES,
"*Assessor.*"

Subscribed and sworn to before me this 30th day of October, 1852.

LYMAN MURDOCK,
Justice of the Peace in said County.

And the counsel for said plaintiffs then offered to read said assents and said affidavit in evidence, and to which the counsel for said defendant objected, on the ground that said plaintiffs must first prove that the signatures to said assents are the genuine signatures of those whose names purport to be signed to the same, and which objection was then and there overruled by said court, and to which ruling and decision the counsel for said defendant then and there, in due time and form,
39 excepted, and the same was then and there duly noted by said court, and the said assents, and the heading thereto, and the said affidavit was then and there read in evidence by said counsel for said plaintiffs.

The counsel for said defendant also in due time objected to the reading of the said affidavit in evidence, on the ground that the same was not legitimate proof in the cause, and also because the word "filed" was not in said affidavit, the said affidavit not averring that the assents thereto attached and filed as aforesaid comprise two-thirds of the resident tax-payers as appeared on any assessment roll of said town as required by said statute; but his honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted by the said court.

The counsel for said plaintiffs then offered to read in evidence the said several bonds, with the coupons thereto attached as mentioned
40 and referred to in said complaint, and to which the counsel for the defendant objected, and contended that the alleged bonds having been issued under a special statute, and that statute having pointed out and provided the mode and manner by which the money should be raised with which to pay them, the said statute formed a part and portion of the alleged bonds, as much so as if the same was incorporated in them, and that the payment of the same must be enforced in the mode and manner pointed out by the statute, and that this action could not be maintained. His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted.

The counsel for the defendant then and there objected to the reading of said bonds and coupons in evidence, unless it was proved that the
41 signatures to said alleged assents of the said alleged tax-payers of said town, as filed in the clerk's office of Cayuga County, were genuine, and, in fact, signed by the persons whose names were attached to the same, and that the same could not be thus proved by said affidavit; but his honor the judge then and there overruled said objection, and to which ruling and decision the counsel for said defendant then and there in due time and manner excepted, and the same was then and there duly noted by the court.

The counsel for said defendant then and there objected to the reading of said bonds and coupons in evidence, because the said affidavit did not conform to the requirements of the statute as above mentioned; but his honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted.

The counsel for said defendant then and there contended that,
42 unless the genuineness of the signatures to said alleged assents were proved in some other way, other than by said affidavit, there was no legitimate evidence that the said Calvin King, Jonas Wood, and Isaac Smith had any power or authority to execute or deliver said

alleged bonds or do anything under said act; but his honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted by the court.

The counsel for said defendant then objected to the reading of said bonds and coupons in evidence, and contended and insisted that the said Calvin King, Jones Wood, and Isaac Smith could not become agents of said town under said act for the purpose of executing said alleged bonds prior to the obtaining and filing of the assents, as required by said act, and until after such assents had been obtained and filed as *as*
43 aforesaid, and that the plaintiffs were bound to prove in some way, other than the production of said affidavit by the clerk of Cayuga County from the files of said office, that the signatures to said assents were genuine, and signed or authorized to be signed by the persons whose names appear to be thereto attached. But his honor the judge decided otherwise and overruled said objection, and to which ruling and decision the counsel for the defendant then and there in due time excepted, and the said exception was then and there noted by the court.

The counsel for said defendant also then and there contended and insisted that the recitals in said alleged bonds, or in the testatum clause to said bonds, were not evidence that the prior conditions required by said act to be done prior to the issuing of said bonds had been complied with; and that the right, power, and authority of said Calvin
44 King, Jones Wood, & Isaac Smith to execute said bonds could not be proved by the recitals in said bonds or in the testatum clause to said bonds; that under the act in question they could not prove their own power or authority to execute or issue the same by recitals which they themselves should insert in the bonds or in said attestation clause to the bonds which they themselves should execute; and, if so, that the same were not sufficient for that purpose; but his honor the judge decided otherwise, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for said defendant then objected to the reading of said alleged bonds in evidence, because by the terms of said bonds the first installment or payment of interest was made payable in a less term than six months after the date of said bonds, to wit, on the first day
45 of July thereafter, and that, therefore, they did not conform to the requirements and conditions of said act, and were therefore not such bonds as were authorized by the act in question; but his honor the judge overruled said objection, and decided that said bonds were in conformity with the requirements and conditions of the statute in question, and to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then objected to the reading of the said several alleged bonds and coupons in evidence, because that, by making seven per cent. interest payable every six months, the interest secured to be paid in and by the same exceeded seven per cent. per annum; but his honor the judge overruled said objection, and to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then objected to the reading of
46 said alleged bonds and coupons in evidence, unless it was proved that they were executed and delivered for money borrowed; but his honor the judge overruled said objection, and to which ruling and

decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The said several objections to the reading of said bonds and coupons in evidence having been overruled and excepted to as aforesaid, the counsel for said plaintiffs then produced the said several bonds, with the several semi-annual-interest coupons thereto attached, from July first, eighteen hundred and fifty-six, to January first, eighteen hundred and seventy-three; and said several bonds were then read in evidence, together with the interest-coupons, which had become due and payable within six years next previous to the commencement of this suit.

The plaintiffs then offered to read in evidence the said interest-coupons, which had become due and payable prior to that
47 date, to wit, from the first day of July, eighteen hundred and fifty-six, up to and within six years next before the commencement of this suit; and to which the counsel for said defendant objected, on the grounds that under the pleadings, the statute of limitations having been pleaded, the plaintiffs were not entitled to recover interest beyond six years next prior to the time of the commencement of this suit. His honor the judge then and there decided that said coupons might be read, and they were read, but that under the plea of the statute of limitations only six years' interest could be recovered. To which ruling and decisions the counsel for said plaintiffs then and there excepted, and the same was then and there noted. The counsel for said plaintiffs then offered in evidence a stipulation signed by David Akins, supervisor of said
48 town of Venice, of which Schedule C, hereunto annexed, is a copy.

The counsel for the defendant admitted that the signature thereto was in the handwriting of the said David Akins, and that he was the supervisor of said town of Venice at the date thereof, but to which the counsel for said defendant objected, on the ground that the said supervisor had no power or authority to bind said town by any such stipulation or agreement. His honor the judge sustained said objection and excluded the proof, and to which ruling and decision the counsel for said plaintiffs then and there excepted, and the same was then and there noted.

The counsel for said plaintiffs then contended that the said plaintiffs had a right to recover interest upon each coupon to which the statute of limitations did not apply, from the time when it became due up to the day of the trial of this suit, and to which the counsel for said
49 defendant then and there objected, and contended that the said plaintiffs could only recover simple interest, and could not compound the same by casting interest upon interest; but his honor the judge decided otherwise, and overruled said objections, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The said bonds were exact duplicates of each other, except as to their numbers, one being numbered 8, and the others being numbered 9, 11, 12, 13, 14, & 22, and a copy of one of which said bonds is hereunto annexed, marked Schedule A. The interest-coupons were also exact copies of each other, except as to the time of payment and the number of the bonds to which they were attached, a copy of one of which coupons is hereunto annexed, marked Schedule B.

The counsel for said plaintiffs then offered to prove the interest
50 which had accrued upon each of said bonds, cast at seven per cent. simple interest, from the first day of July, eighteen hundred and fifty-six, (no interest being claimed prior to that date,) to the time of

trial, to which the counsel for the defendant objected, upon the ground that the plaintiffs could not be allowed to recover interest for more than six years prior to the commencement of this action; and the said court then and there so decided, and refused to allow the proof thus offered to be made, and to which ruling and decision the counsel for said plaintiffs then and there, in due time and form, excepted, and said exception was then and there duly noted by the court.

The plaintiffs then proved the interest and principal, according to the ruling aforesaid, to be ten thousand nine hundred and thirty-eight dollars and twenty cents, and rested.

The counsel for the defendant then asked the court to rule and
51 decide that on the above proof the plaintiffs were not entitled to recover; but his honor the judge declined to so rule or decide; but, on the contrary thereof, ruled and decided that on the facts as above proved the plaintiffs were entitled to recover, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted by the court.

The counsel for said defendant then offered to show that the bonds in suit were originally and in the first instance delivered to said railroad company mentioned in the pleadings for stock, and not for money borrowed; and to which the counsel for said plaintiffs then and there objected, and the court sustained the objection, and excluded the testimony offered; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then offered to show that Ben-
52 jamin Gould, esq., of Cayuga County, was the owner of the bonds now in suit, in eighteen hundred and fifty-four, and continued to be the owner and holder of them until some time on or about the first day of September, eighteen hundred and sixty-seven, when he disposed of the same, but not to these plaintiffs; and to which the counsel for said plaintiffs then and there objected, and his honor the judge excluded the evidence thus offered; and to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then offered to show that the said Benjamin Gould commenced an action against the said town of Venice, in the supreme court of the State of New York, some time on or about the ninth day of August, eighteen hundred and fifty-eight, on said bonds, to recover the interest then unpaid on the same; and that such proceed-
ings were thereupon had in said action that a judgment was re-
53 covered in said action against said town for the interest then due and unpaid on said bonds, and from which judgment the said town of Venice appealed to the court of appeals of said State, where said judgment was reversed, and at the same time that the cause of Starin vs. The Town of Genoa was reversed, as reported in the 23d of New York Reports, 439, &c., and for the same reasons; and that said Gould then discontinued and withdrew said suit; and to which the counsel for said plaintiffs then and there objected, and his honor the judge sustained the objection, and excluded the proof offered; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then & there noted.

The counsel for said defendant then and there contended that the proof thus offered, if admitted in evidence, would change the burden of
proof and compel the plaintiffs to prove that they were in fact
54 bona-fide holders for value, and that under such proof and

the circumstances of the case the mere production of said bonds by them did not prove that fact; but his honor the judge decided otherwise; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then offered to show that some of the signatures to said assents were not genuine, and that others were duplicates, and that, in point of fact, the same never were signed by two-thirds of the resident tax-payers of said town as required by said act, and to which the counsel for said plaintiffs objected; and his honor the judge, after expressing great doubts on the subject, concluded to, and did, exclude the evidence offered; and to which ruling and decision the counsel for said defendant then and there
55 in due form and manner excepted, and the same was then and there duly noted by said court. The counsel for said defendant then referred to the general statutes of the State of New York, under and by virtue of which it was claimed that said town of Venice was incorporated, and contended and insisted that the said town was not such a corporation as made it a citizen, but was a part and portion of the machinery of the State government, and not a citizen of the State, and that this court has no jurisdiction over it or in this matter; but his honor the judge decided otherwise, and to which ruling and decision of his honor the judge the counsel for said defendant then and there excepted, and the same was then and there noted.

Here the testimony closed.

The counsel for said defendant then requested his honor the judge to charge the jury that on the above proofs in this cause the plaintiffs were not entitled to recover. His honor the judge declined so
56 to charge the jury; and to which refusal the counsel for said defendant then and there in due form and manner excepted, and the same was then and there in due form and manner noted by said court. His honor the judge then charged the jury that the plaintiffs, on the above proofs, were entitled to recover the principal secured to be paid by said several bonds, together with interest thereon from the first day of January, one thousand eight hundred and seventy-three, to the time of trial, together with the amounts specified in the several coupons which became due and payable within six years previous to the commencement of this action, together with interest upon said several coupons from the time the moneys therein severally specified became due and payable to the time of trial. To which charge the counsel for the said plaintiffs then and there, in due time and manner, excepted, and requested the said court to charge said jury that said plaintiffs were entitled
57 to recover the principal monies secured by said several bonds, together with simple interest thereon from the first day of July, one thousand eight hundred and fifty-six, to the time of trial; but said court refused to charge as thus requested, or in anywise to alter or vary the charge as theretofore made and given as above mentioned; and to which charge as given, and to said refusal to charge as requested, said counsel for said plaintiffs then and there duly excepted, and said exception was then and there duly noted by said court.

The counsel for said defendant also then and there, and in due time and manner, excepted to so much of said charge whereby the said judge charged the jury that the said plaintiffs were entitled to recover the principal secured to be paid by said several bonds, together with the interest thereon from the first day of January, one thousand eight hundred and seventy-three, to the time of trial, and which said
58 exception was then and there duly noted by said court.

The counsel for said defendant also then and there, and in due time and manner, excepted to so much of said charge whereby the said judge charged said jury that the said plaintiffs were entitled to recover interest upon said several coupons from the times the monies therein severally specified became due and payable to the time of trial, and which exception was then and there duly noted by said court.

The jury then, under the direction of the court as aforesaid, and without retiring from said court, found their verdict for the plaintiffs for the sum of ten thousand nine hundred and thirty-eight dollars and twenty cents.

And because none of the said exceptions, offers, requests, & exceptions so offered, made, and excepted to, as aforesaid, to the rulings, opinions, and decisions of the said judge do appear upon the record of the said trial, therefore, on the prayers of the said defendant, by
59 his said counsel, his honor the judge hath to this bill of exceptions set his hand and seal, according to the statute and the rules and practice of this court in such case made and provided, this twelfth day of September, one thousand eight hundred and seventy-three.

WARD HUNT, [L. S.]
Asso. Just. Sup. Ct. U. S.

WARREN A. WORDEN,
Deft.'s Atty., Auburn, N. Y.
WARREN T. WORDEN,
Of Counsel.

60 SCHEDULE A.

No. 9. Oyer.

STATE OF NEW YORK,
County of Cayuga:

Seven per cent. loan, not exceeding $25,000.

Be it known that the town of Venice, in the county of Cayuga and State of New York, in pursuance of an act of the legislature of the said State, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," passed April 16th, 1852, and for the purpose of aiding the construction of the Lake Ontario, Auburn and New York Railroad, owes and promises to pay to or bearer one thousand dollars, with interest at the rate of seven per cent., payable semi-annually, on the first days of January and July in each year, on surrender of the coupons hereto attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursable at the
61 same place at the expiration of twenty years from the first day of January, 1853.

In testimony whereof the supervisor and commissioners of the town of Venice have, pursuant to the provisions of the act aforesaid and the written assent of two-thirds of the resident tax-payers of said town, obtained and filed in the office of the clerk of the county of Cayuga, hereunto subscribed their names this second day of March, A. D. 1853.

CALVIN KING,
Supervisor.
JONAS WOOD,
ISAAC SMITH,
Commissioners.

SCHEDULE B.

$35.

The town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of January, 1856, being interest due on that day on bond No. 9.

CALVIN KING,
Supervisor.
JONAS WOOD,
ISAAC SMITH,
Commissioners.

62 SCHEDULE C.

Circuit court U. S. N. D. of N. Y

WILLIAM L. MATTSON }
vs.
THE TOWN OF VENICE. }

Whereas this action is now pending, wherein the plaintiff is now seeking to recover the interest-monies claimed to be due upon two certain written instruments, which are claimed to have been issued by said town of Venice in virtue of the act of the legislature of the State of New York, passed April 16, 1852; and whereas there are twenty-three other like instruments in writing claimed to have been issued under said act and now in the hands of other parties, the interest coupons upon which, or some of them, may become uncollectable by reason of the statute of limitations if suits thereon be delayed; and whereas it is desired,
63 on the part of said town, that no more suits be brought until the question of the validity of said bonds be finally determined:

Now, in consideration of the premises, it is hereby agreed by and on behalf of said town, that the said town will not plead the statute of limitations or insist upon the *the* same in any suit which may hereafter be brought upon any of the said twenty-three bonds, or to any coupons for interest accruing thereon, which at the date hereof are not more than six years past due. This stipulation not to apply to the bonds now or formerly held by Lyman Murdock or Amos Hutchinson.

Auburn, June 17th, 1867.

(Signed) DAVID AKIN,
Supervisor of the town of Venice.

(Endorsed:) Circuit court of the United States, second circuit, northern district of New York. The Town of Venice ads. James O. Woodruff and Daniel Macauley, defendants. Bill of exceptions. Warren A. Worden, deft.'s atty. Auburn, N. Y. Filed September 12, 1873.

64 Circuit court & northern district of New York.

UNITED STATES OF AMERICA,
State of New York, Cayuga County, ss:

John L. Manchester, William Jennings, Charles H. Hunsi'ker, & Amos Main, sureties in the annexed & following bond, being duly sworn, deposeth and says, and each for himself says, that he is a householder & freeholder, & residents within said county, to wit, in the

town of Venice, in said county; and the said John L. Manchester, William Jennings, & Charles Hunsicker, & each for himself says that he is worth the sum of three thousand dollars over and above all debts and liabilities which he has incurred, and the said Amos Main says that he is worth the sum of two thousand dollars over and above all debts and liabilities which he has incurred.

J. L. MANCHESTER.
AMOS MAIN.
CHARLES HUNSICKER.
JACOB SIGNER.
WILLIAM JENNINGS.

Sworn & subscribed to before me this 18th day of September, 1873.

W. W. MANCHESTER,
Notary Public for Cayuga Co.

65 Know all men by these presents, we

all of the town of Venice, in the county of Cayuga, & State of New York, are held and firmly bound unto James O. Woodruff & Daniel Macauley in the sum of twenty-two thousand two hundred & fifty dollars, to be paid to the said James O. Woodruff & Daniel Macauley, their executors, or administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, firmly by these presents, sealed with our seals and dated this sixteenth day of September, one thousand eight hundred and seventy-three.

Whereas the town of Venice, in the county of Cayuga, and State of New York, is about to prosecute a writ of error from the Supreme Court of the United States, to reverse the judgment rendered by the circuit court of the United States for the second circuit & northern district of the State of New York, in a certain action in which the said James O. Woodruff & Daniel Macauley were plaintiffs & the said town of Venice was defendant, & in which said action a judgment has been rendered in said circuit court in favor of said plaintiff & against the said town of Venice, for the sum of eleven thousand one hundred & eighty-three dollars & seven cents, damages & costs, and the record thereof filed
66 with the clerk of said circuit court, at his office in the city of Utica, on the fifteenth day of September, one thousand eight hundred & seventy-three:

Now, therefore, the conditions of this obligation is such that the said town of Venice shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise the same shall be and remain in full force & virtue.

J. L. MANCHESTER.	[L. S.]	JACOB SIGNER.	[L. S.]
GUSTAVUS LYMAN.	[L. S.]	D. D. PUTNAM.	[L. S.]
B. F. BARNES.	[L. S.]	C. H. HUNSICKER.	[L. S.]
WILLIAM LAVEN.	[L. S.]	HIRAM WALLACE.	[L. S.]
WILLIAM JENNINGS.	[L. S.]	AMOS MAIN.	[L. S.]
SQUIRE HOLLEY.	[L. S.]	LEVI HOFFMAN.	[L. S.]
PATRICK LAVEN.	[L. S.]	WM. P. PURDY.	[L. S.]
S. E. SMITH.	[L. S.]		

67 Circuit court & northern district of New York.

UNITED STATES OF AMERICA,
State of New York, Cayuga County, ss:

On this eighteenth day of September, 1873, before me, the subscriber, personally appeared John J. Manchester, Gustavus Lyman, Benjamin F. Barnes, William Lavin, William Jennings, Squire Holley, Stacey E. Smith, Jacob Signer, David D. Putnam, Hiram Wallace, Amos Main, Levi Hoffman, Charles H. Hunsicker, Patrick Lavin, William P. Purdy, to me personally known to be the same persons described in and who executed the within & annexed instrument, & acknowledged that they executed the same.

W. W. MANCHESTER,
Notary Public for Cayuga County.

UNITED STATES OF AMERICA,
Northern District of New York,
State of New York, Cayuga County, ss:

Gustavus Lyman, Benjamin F. Barnes, Jacob Signer, David D. Putnam, Hiram Wallace, Levi Hoffman, Patrick Lavin, William P. Purdy, the sureties in the within & annexed bond, being duly sworn, depose and say, each for himself, that he is a householder and freeholder, within said county and district, in the town of Venice aforesaid, & that he is worth five thousand dollars over and above all debts and liabilities
68 which he has incurred.

B. F. BARNES.
PATRICK LAVIN.
T. E. SMITH.
WM. P. PURDY.
LEVI HOFFMAN.
HIRAM H. WALLACE.
GUSTAVUS LYMAN.
D. D. PUTNAM.

Sworn and subscribed to before me this eighteenth day of September, 1873.

W. W. MANCHESTER,
Notary Public for Cayuga County.

(Indorsed:) Town of Venice. Bond. Penalty, $22,250.00. Woodruff & Macauley suit.

I approve of the within bond as to its form and the sufficiency of the sureties to stay execution.

WARD HUNT.

Filed Sept. 22, 1873.

69 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the judges of the circuit court of the United States for the second circuit & northern district of New York, greeting:

Because in the records & proceedings, and also in the rendition of judgment of a plea, which is in the said circuit court & northern district of New York, before you, between James O. Woodruff & Daniel

Macauley, plaintiffs, and the town of Venice, in the county of Cayuga, & State of New York, a manifest error hath happened, to the great damage of the said town of Venice, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full & speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then & there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws & customs of the United States should be done.

Witness the Hon. Nathan Clifford, senior associate judge and acting Chief-Justice of the said Supreme Court, the 22d day of September, in the year of our Lord one thousand eight hundred & seventy-three.

CHARLES MASON,
Clerk of the Circuit Court of the United States for the Northern District of New York.

Allowed by—

WARD HUNT.

(Indorsed:) Supreme Court of the United States. The town of Venice, plaintiff in error; James O. Woodruff and Daniel Macauley, defendants in error. Writ of error. Filed Sept. 22, 1873.

70 UNITED STATES OF AMERICA, *ss:*

To James O. Woodruff and Daniel Macauley, greeting:

You are hereby cited & admonished to be & appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the second circuit & northern district of New York, wherein the town of Venice is plaintiff & you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Nathan Clifford, senior associate judge and acting Chief-Justice, of the said Supreme Court of the United States, this 22d day of September, in the year of our Lord one thousand eight hundred and seventy-three.

WARD HUNT.

71 UNITED STATES OF AMERICA.
Northern District of New York, Cayuga County, ss:

Warren A. Worden, of Auburn, in said county & district, being duly sworn, says that on the 23rd of Sept., 1873, he personally served a copy of the within citation on David Wright, esq., the plaintiff's attorney, by handing the same to & leaving it with him personally at his office in Auburn aforesaid.

WARREN A. WORDEN.

Sworn & subscribed to before me this 23d day of September, 1873.

CHARLES L. ADAMS,
U. S. Commissioner Northern Dist. of N. Y.

(Indorsed:) Supreme Court of the United States. The town of Venice,

plaintiff in error; James O. Woodruff & Daniel Macauley, defendants in error. Citation. To keep and file.

Due & personal service of a copy of the within citation is admitted this 23d of Sept., 1873.

D. WRIGHT,
Plff.'s Atty.

Filed Sept. 24, 1873.

72 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of James O. Woodruff and Daniel Macauley vs. The Town of Venice.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Utica, in said district, this 6th day of October, A. D. 1873.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsement on cover:) No. 266. The Town of Venice, plaintiff in error, vs. James O. Woodruff and Daniel Macauley. N. New York, C. C. U. S. Filed 16th October, 1873.